Supreme Court, U. S.
FILED
MAY 14 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

June Term, 1979

No. 78-1705

ANABEL J. McCUTCHEON, *Pro Se*
Petitioner,
vs.
THE CHICAGO BOARD OF EDUCATION, *Et. Al.*
THE CHICAGO PRINCIPALS ASSOCIATION, AFL-CIO
Respondents.
THE CHICAGO BOARD OF EDUCATION, *Et. Al.*
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANABEL J. McCUTCHEON,
Pro Se
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025

INDEX

Page

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 7th CIRCUIT 1

OPINIONS BELOW 2

JURISDICTION 2

QUESTIONS FOR REVIEW 3

CONSTITUTIONAL PROVISION INVOLVED 4

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 7

CONCLUSION 9

CERTIFICATE 9

APPENDIX A 10

APPENDIX B 13

APPENDIX C 14

APPENDIX D 15

APPENDIX E 16

APPENDIX F 18

APPENDIX G 21

APPENDIX H 22

IN THE

Supreme Court of the United States

June Term, 1979

No._____

ANABEL J. McCUTCHEON, *Pro Se*
Petitioner,
vs.
THE CHICAGO BOARD OF EDUCATION, *Et. Al.*
THE CHICAGO PRINCIPALS ASSOCIATION, AFL-CIO
Respondents.
THE CHICAGO BOARD OF EDUCATION, *Et. Al.*
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Comes now Anabel J. McCutcheon, on her own behalf, and respectfully petitions this Honorable Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review Court's decisions in Anabel J. McCutcheon vs. the Chicago Board of Education in 78-2545 which upheld the unusual actions of Judge George N. Leighton on November 3, 1978:

1) in taking over three non-title VII cases not assigned to him;
2) in consolidating them with his two year old Title VII case;
3) in ordering a three month briefing schedule for the dismissal of Defendants in these three non-title VII cases not assigned to him;
4) in denying Plaintiff a jury trial on her Complaint for Teacher-Firing for the reason that the Title VII [Equal Pay for Female Principal] was not tried by a jury;
5) in ignoring a November 1st order of Judge John Grady to Defendant Attorney Heineke to show cause why he was soliciting on October 16, 1978 H. Stuart Cunningham, Clerk of the U.S. District Court for this consolidation of these three non-title VII cases **when he had not filed as Attorney of Record** for any of these three cases—and had no contract made in public meeting with the Chicago Board of Education.

OPINIONS BELOW

The United States Court of Appeals entry is not reported and is printed in *Appendix A*.

The order of the Appellate Court denying a rehearing is not reported and is printed in *Appendix B*.

The order of the Appellate Court denying reimbursement of the docketing fees under 28 U.S.C. §1292 is not reported and is printed in *Appendix C*.

JURISDICTION

The Appellate Court decision herein was entered on January 19, 1979 and its order denying rehearing was

entered on February 13, 1979: the order denying reimbursement of docketing fees under 28 U.S.C. §1292 was entered on March 1, 1979.

The jurisdiction of this Court is invoked under 28 U.S.C. 2101 (c); §1291, §1292.

QUESTIONS FOR REVIEW

1. Whether Judge George N. Leighton had jurisdiction on November 3rd over three non-title cases not assigned to him until November 9, 1979:

   a) to consolidate the teacher-firing case with his Title VII case of Equal Pay for Female Principal: the Plaintiff being the victim in both cases and being duly state certified as a principal and teacher with 30 years tenure;

   b) to order a briefing schedule for the dismissal of defendants in the three non-title VII cases that were not his—the Defendants having been enjoined for **different causes of action** in the separate suits;

   c) to deny Plaintiff a jury trial in the teacher-firing case;

   d) to override the November 1, 1978 order of Judge John Grady to Defendants to show cause why he was soliciting this consolidation.

2. Whether the *Pro Se* Plaintiff was denied a fair and unbiased appeal because of the error of the Appellate Court in accepting inaccurate and incomplete records from the Deputy Clerks, who failed to correct their mistakes when the "extra" fees for their services (at Christmastime) weren't paid:

a) Appellate Court Deputy Clerk, Charlie Webb, filed two additional appeals (#78-2538, 78-2539) in the Title VII case and the Teacher-Firing case without authority and solicited an extra $100 for the same appeals **which he filed.** A copy of his request for the extra fees is printed in *Appendix D.*

b) District Deputy Clerk, Gilda Gates, submitted a falsified (in her own handwriting in red ink) "order" of Judge Grady assigning this case to Judge Leighton, November 3, 1978 although Defendant had requested the **November 1, 1979 order of Judge Grady to the Defendant Attorney Heineke to show cause . . .** in Plaintiff's Designation of appeal and had attached a copy to her Notice of Appeal, November 29, 1978. Deputy Clerk Gilda Gates **certified this false order** to the Appellate Court on December 14, 1978 and solicited an extra $5.00 "docketing" fee.

c) District Deputy Clerk, Willie Haynes solicited an extra $5.50 fee for the incomplete records he submitted a day too soon and solicited a "docketing" fee of $5.50. Docketing Fees had been paid with the Notice of Appeal—to the cashier in person.

d) Appellate Court Deputy Clerk, Maribeth McPhillips returned all records to the lower court **without authorization to do so:** as Plaintiff had requested (and paid the certification fee) the records to be sent to the United States Supreme Court on February 12, 1979 and had notified all parties that she would be filing a petition under 28 U.S.C. 2101 (c): filing this notice with the Appellate Court on February 28, 1978.

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment, United States Constitution, §1 . . . "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

to any person within its jurisdiction the equal protection of the laws."

Other Constitutional Provisions are hereto enclosed as *Appendix E, Appendix F, Appendix G,* and *Appendix H.*

STATEMENT OF THE CASE

On November 3, 1978 in the United States District Court of Illinois, for the Northern District, the Eastern Division, Judge George N. Leighton "consolidated" Plaintiff's Complaint for Wrongful **Teacher Dismissal** and **Deprivation of a Means of a Livelihood** [78 C 3894] with her four-year-old **Principal's Equal Pay Suit** [EEOC, TCH 5-0061 and 76 C 4763, Title VII]. The order was docketed November 7, 1978:

Before the 78 C 3894 case was transferred to Judge Leighton, effective November 8, 1978.

Eighteen months previously on June 24, 1977 Judge Leighton had denied Plaintiff a Hardship Injunction for Career Damage filed for **teaching** and/or principal's position in the interim of Plaintiff's Suspension Hearings [September 6, 1976 through October 5, 1977] for "conduct unbecoming a **principal**"; subsequently she was dismissed from the service as a principal and **teacher without the hearing mandated by the state statutes,** Ill. Rev., 1975, Chapter 122: 34-85 with 30 years **tenure.** In the course of the June 24th hearing the suspension proceedings were alleged to be **"unrelated"** and the Defendants' Allegation of **"unrelatedness"** was upheld by the Court. This order was docketed by the Court, July 1, 1977.

The **motion, legal memorandum, and transcript of this hearing** were filed by the Plaintiff-Appellant with the **Notice of Appeal,** Designation of the Record, and Plaintiff's List of Exhibits on November 24, 1978 and

docketed December 6, 7, 1978 under two appeal numbers by error of the Clerks of the Courts: #78-2539 (error) and #78-2545 (correct number).

On January 19, 1979 at a status hearing on the Equal Pay Suit, Plaintiff was denied a jury trial: denying her the Right of a Jury Trial under F.R.C.P. Rule #38 and #39 for her Wrongful Dismissal: a state protected right under the Illinois Tenure Law, the Ill. Rev. Stat., 1975, chap. 122: 34-85 and the Illinois Tort Immunity Act and Civil Rights Laws of Tort Liability.

In violation of the F.R.C.P. Rule #4: Attorney Brown has spoken inaccurately for the Equal Pay Suit, for which he is not the Attorney of Record; In violation of the F.R.C.P. #4: Attorney Heineke has spoken for the 1978 Wrongful Dismissal **Teacher** for which his firm's insurance contract has expired—**except under the consolidation procedural error** of Judge Leighton and subsequent orders for statements in support of motions, memoranda, and decisions via mail, which have not been forthcoming further delaying the justice of the Court, confusing two separate causes, different defendants, **and two different salary scales** with redress requested differing in salary as much as $40,000 to $100,000. It is the "consolidation" of this case that has caused great confusion of records, expense of extra Judges' time on the misinformation of the Defendants' Attorneys, who solicited this case on October 16, 1978 **before they were retained by Defendant Chicago Board of Education.**

On January 25, 1979 Plaintiff-Appellant received her copy of the Appellate Court decision. In the documents filed for motion for rehearing is a copy of the postmark date of January 23, 1979 and a letter improperly soliciting extra fees from Plaintiff-Appellant for *two* Appellate Court numbers.

REASONS FOR GRANTING THE WRIT

Jurisdiction of the United States Supreme Court is invoked under Rule 19B for the reasons that the U.S. Court of Appeals, 7th District:

1. has decided an important State [protected under 42 U.S.C. §1983, which imposes no federal limits except those of the State] and Federal Question [Title VII, EEOC] in conflict with the applicable State laws for Dismissal of Teachers, Ill. Rev. Stat., 1975; Chap. 122 §34-85, the Illinois Tenure Act and the Illinois and Federal Tort Immunity, Liability Acts.

2. has decided an important question of federal law which has not been settled by this Court: *eg.* that of "consolidating" and "relating" two different civil rights violations for deprivation of **Teacher** pay and unequal Principal pay when teacher pay is not involved in the Title VII suit—and is truly not involved in the **Teacher Dismissal** as Plaintiff has not drawn **Teacher** pay since June, 1963 before the Sex Discriminatory Equal Pay Act was effected.

3. has decided a federal question in a way that is in conflict with applicable decisions of this court: *eg.* the dismissal of Defendants Chicago Board of Education on the allegation of absolute immunity in the Title VII, 76 C 4763 suit and the order to answer motions, file statements, memoranda in answer to the motions of Defendants to dismiss Defendants as "Not Guilty" **before trial** in the order consolidating the Complaint for Wrongful Dismissal Firing [78 C 3894] in violation of the Federal Civil Rights of Teachers.

4. has so far departed from accepted and usual course of judicial proceedings:

by violating of the F.R.C.P., Rule #42 in that no motion was filed denying the rights of the Plaintiff to speak against this consolidation in Judge Marshall's Court, November 2, 1978 and in Judge Leighton's Court, November 3, 1978;

5. has so sanctioned such a departure by a lower court as to call for an exercise of this Court's Power of Supervision:

that of Judge Leighton taking over this case and two others from two other Judges under the **Title VII before transfer by the** Chief Presiding Judge, Parsons.

that of Judge Leighton ordering a briefing schedule of memoranda and statements in response to Defendants' Motions for dismissal of **Four Common Defendants** Preston, Wild, Johnson, Hannon **before trial** on alleged absolute immunity when aforesaid Defendants had already been dismissed from the Title VII suit [docketed 3/15/78 on order entered 3/10]

that Defendant Attorneys Heineke and Brown were permitted to consolidate these cases though they were not the Attorneys of Record, October 16, 1978 by letters of solicitation to H. Stuart Cunningham, Clerk of the U.S. District Court

that Deputy Clerk of the U.S. Court of Appeals, Charlie Webb, solicited Plaintiff for "extra" fees because of his errors in assigning two appeal numbers—wherein the documents were misfiled and/or destroyed and Plaintiff was denied return of $200 in docketing fees—in violation of the Circuit Rules of the U.S. Court of Appeals, Rule 26 a 1 28 U.S.C. §1292 (b) docketing fee for interlocutory appeal not allowed.

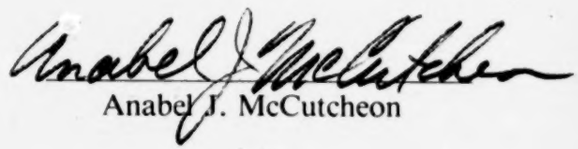
with the result that the records of the U.S. Court of Appeals are inaccurate and incomplete caused by the confusion and complication of "Consolidation."

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the decisions and judgment of the United States Court of Appeals for the Seventh Circuit.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For A Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit were sent by first class mail, postage prepaid, to counsel representing the parties to this proceeding on May 14, 1979.



Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
328-1630

Appendix A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 19, 1979

Before
Hon. Thomas E. Fairchild, Chief Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

Anabel J. McCutheon,
Plaintiff-Appellant,

Nos. 78-2539 and 78-2545

vs.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 78-C-3894

The Board of Education, City of Chicago, et al Judge George N. Leighton Defendants-Appellees.

This matter comes before the court on the filing herein of the following documents:

1. The letter filed herein on December 6, 1978 by the plaintiff-appellant.

2. The **"Appellees' Statement as to Jurisdiction, Incorporating Memorandum Addressing the Jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit"** filed herein on January 2, 1979.

3. The **"Chicago Principals Association's Statement as to Jurisdiction"** filed herein on January 3, 1979 by one of the counsel for the defendants-appellees.

4. The **"Plaintiff-Appellant's Motion to Strike Appellate Court No. 78-2539"** filed herein on January 5, 1979 by the plaintiff-appellant.

5. The **"Plaintiff-Appellant's Motion #2 to file Chicago Principal's Union Answer as a Part of the Supplementary Record of this Case, 78-2545"** filed herein on January 10, 1979 by the plaintiff-appellant.

6. The **"Plaintiff's Statement as to Jurisdiction"** filed herein on January 10, 1979 by the plaintiff-appellant.

For the purposes of clarity on review a summary of the facts underlying this appeal are presented. On September 29, 1978 the plaintiff filed here Sections 1983, 1985 and 1988 complaint docketed below as 78-C-3894 alleging that she was wrongfully discharged from her school-teaching position. On November 8, 1978, 78-C-3894 was reassigned by the Executive Committee from Judge Marshall's to the calendar of Judge Leighton on the grounds that the case was related to 76-C-4763, the plaintiff's sex discrimination case already pending before Judge Leighton.

Treating **"Plaintiff's Notice of Appeal #2"** filed in the district court on November 24, 1978 in 78-C-3894 as an effort to obtain review in this court of Judge Leighton 's order of November 3, 1978 allegedly consolidating 78-C-3894 with 76-C-4763 before the Executive Committee's reassignment, the appeal in 78-2545 is hereby **dismissed** on the grounds that there is no final and appealable order under 28 U.S.C. §1291 nor is such an order included in those categories enumerated in 28 U.S.C. §1292.

Treating plaintiff's **"Motion for an Interlockatory** *[sic]* **Appeal"** filed in the district court on November 17, 1978 in 78-C-3894 as an effort to obtain review in this court of Judge Marshall's order of November 3, 1978 allegedly consolidating 78-C-3894 with 76-C-4763 or an order of November 15, 1978 wherein Judge Marshall recommended to the Executive Committee that 78-C-3894 be reassigned to the calendar of Judge Leighton, the appeal docketed in 78-2539 is hereby **dismissed** on the grounds that, in either case, there is no final and appealable order.

Since both appeals 78-2539 and 78-2545 are **dismissed** all pending motions in these cases are hereby **denied.**

Appendix B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

February 13, 1979

Before
Hon. Thomas E. Fairchild, Chief Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

Anabel J. McCutheon,
Plaintiff-Appellant,

Nos. 78-2539 and 78-2545

The Board of Education, City of Chicago, *et al.*,
Defendants-Appellees.

vs.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3894
George N. Leighton,
Judge

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by Plaintiff-Appellant Anabel J. McCutcheon, all of the judges on the original panel have voted to **deny** a rehearing. Accordingly,

It is ordered that the aforesaid petition for rehearing be, and the same is hereby, **denied.**

Appendix C

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 1, 1979

Before
Hon. Walter J. Cummings, Circuit Judge

Anabel J. McCutheon, Plaintiff-Appellant,	**vs.**	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 78-C-3894
No. 78-2545		
The Board of Education, City of Chicago, *et al.,* Defendants-Appellees.		**George N. Leighton,** *Judge*

This matter comes before the court on the **"Plaintiff's Request for Reimbursement of Docketing Fee"** filed herein on February 22, 1979 by the pro se plaintiff-appellant. On consideration thereof, this court being fully advised in the premises,

It is ordered that said motion for reimbursement of the $50.00 docketing fee is hereby **denied.**

It is ordered that the aforesaid petition for rehearing be, and the same is hereby, **denied.**

Appendix D

United States Court of Appeals
For the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Thomas F. Strubbs
Clerk
312-435-5850

9 January 1979

Anabel J. McCutcheon
1917 Tanglewood Drive
Apartment 3B
Glenview, Illinois 60625

Dear Ms McCutcheon:

You have two cases now docketed in our court. Case number 78-2538 and 78-2539 are both entitled *McCutcheon* v. *City of Chicago*. The fact that you have motions to dismiss these appeals does *not* relieve you of the obligation to pay the $50 docketing fee for each appeal. Please forward a check to the Clerk's office immediately. I am

(Signed)
Charlie Webb
Deputy Clerk

pc/Clerk
Chief Deputy Clerk
File

Appendix E

34--85. Removal for cause—Notice and hearing—Suspension.

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34--84) be removed except or cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board or a duly authorized comittee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days before the date of hearing. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or the board. The teacher shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The action and decision fo the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34--85b of this Act. Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension. As amended by act approved Aug. 26, 1963. L. 1963, p. 3427.

Sec. 4-21. Classification of Certificates. Certificates to teach in the Chicago Public Schools are classified as follows:

(a) **Certificate of Principal.** Service on this certificate shall continue the validity of any certificate of any of the following groups whcih may be in force during time of service as principal. The holder of the certificate of principal shall be eligible for appointment to any position for which a teacher's certificate is required, provided he meets the specific requirements of that position.

Appendix F

CONSTITUTIONAL PROVISIONS, STATUTES

Jurisdiction of the federal courts is invoked pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"):

EQUAL PAY ACT OF 1963
(Act of June 10, 1963, Public Law 88-38, 77 Stat. 56, effective June 11, 1964)

[¶ 22,298]

AN ACT

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

[Section 1.] This Act may be cited as the "Equal Pay Act of 1963".

DECLARATION OF PURPOSE

Sec. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

(1) depresses wages and living standards for employees necessary for their health and efficiency;

(2) prevents the maximum utilization of the available labor resources;

(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[EQUAL PAY AMENDMENT OF FLSA]

Sec. 3. Section 6 of the Fair Labor Standards Act of 1938, as amended (29 U. S. C. *et seq.*) is amended by adding thereto a new subsection (d) as follows: [The amendments made by the Equal Pay Act of 1963 are incorporated in place in the Fair Labor Standards Act of 1938, as amended, reproduced in full text at ¶22,050.]

[EFFECTIVE DATES]

Sec. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: *Provided,* That in the case of employees covered by bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall occur first.

Appendix G

Jurisdiction of the federal courts is invoked pursuant to 42 U.S.C. 1983, 1988:

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
R.S. § 1979.

Appendix H

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.
R.S. § 722.

under the F.R.C.P., Rule #8

Supreme Court, U.S.
FILED
JUN 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1705

ANABEL J. McCUTCHEON,

Petitioner.

vs.

THE CHICAGO BOARD OF EDUCATION, ET AL.,

Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MICHAEL J. MURRAY,
228 North LaSalle Street,
Chicago, Illinois 60601,
Attorney for Respondent.

THOMAS BROWN,
221 North LaSalle Street,
Chicago, Illinois 60601,
Attorney for Respondent.

WILLIAM J. QUINLAN,
MICHAEL COHEN,
THOMAS BROWN,
Of Counsel.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS.

	PAGE
Orders Below	1
Jurisdiction	2
Questions Presented	2
Reasons for Refusing the Writ	2
Conclusion	4

CITATIONS.

Cases.

In Re Master Key Antitrust Litigation, 528 F. 2d 5 (2d Cir. 1975)	3
Katz v. Realty Equities Corp. of N. Y., 521 F. 2d 1354 (2nd Cir. 1975)	3
Levin v. American Export Industries, Inc., 473 F. 2d 1008 (2nd Cir. 1973)	3
National Association for the Advancement of Colored People of Louisiana v. Michot, 480 F. 2d 547 (3rd Cir. 1973)	3
Nolfi v. Chrysler Corp., 324 F. 2d 373 (3rd Cir. 1963)	3
Skiven v. Mesta, 141 F. 2d 668 (10th Cir. 1944)	3
Travelers Indemnity Co. v. Millers Manufacturing Co., 276 F. 2d 955 (6th Cir. 1960)	3
United States v. Chelsea Towers, Inc., 404 F. 2d 329 (3rd Cir. 1968)	3

Treatises.

9 Moore's Federal Practice, par. 110.13(8) at p. 183 (1975) 3

9 Wright and Miller, Federal Practice and Procedure, Section 2386 at p. 275 (1971) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1705.

ANABEL J. McCUTCHEON,

Petitioner,

vs.

THE CHICAGO BOARD OF EDUCATION, ET AL.,

Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondents pray that the requested Writ of Certiorari not issue to review the Orders of the United States Court of Appeals for the Seventh Circuit issued on January 19, 1979 and February 13, 1979.

ORDERS BELOW.

The order of the Court of Appeals dismissing petitioner's appeal is reproduced in Appendix A to the Petition at page 10. The order of the Court of Appeals denying petitioner's motion for rehearing is reproduced in Appendix B to the Petition at page 13.

JURISDICTION.

Jurisdiction is based on 28 U. S. C. 1254.

QUESTIONS PRESENTED.

Whether the Supreme Court should consider the Seventh Circuit Court of Appeals' order dismissing for lack of jurisdiction the petitioner's interlocutory appeal of the consolidation of related cases by the United States District Court for the Northern District of Illinois.

REASONS FOR REFUSING THE WRIT.

The writ should be denied because the order of the Seventh Circuit Court of Appeals dismissing petitioner's appeal of a consolidation order of the District Court is not a final judgment and does not involve issues of imperative importance nor does the petition set forth any basis in the action of the courts below which entitles her to a writ of certiorari under the standards of Rule 19(b).

The petitioner has misconstrued the action of the United States Court of Appeals in dismissing her appeal from a consolidation order of the United States District Court. The Court of Appeals dismissed petitioner's appeal because of lack of jurisdiction. It held that an order of consolidation is neither included in the categories enumerated under 28 U. S. C. § 1292 giving the Court of Appeals jurisdiction of interlocutory decisions (A. 12), nor a final decision of a district court under 28 U. S. C. § 1291.

The Court of Appeals found it had no jurisdiction of petitioner's purported appeal and never reached the merits of the petitioner's case which is still pending in the District Court on the trial calendar. Thus, the Court of Appeals did not uphold

"unusual actions" of the District Court. It did not deny petitioner a jury trial on her complaint for teacher firing.

Considering this particular issue, Judge Friendly said in his concurring opinion in *Katz* v. *Realty Equities Corp. of N. Y.*, 521 F. 2d 1354 (2nd Circuit 1975):

> "If asked to provide an example of an order that was not a 'final decision' appealable under 28 U. S. C. 1291, one could hardly do better than pick the order [of consolidation] review of which is being sought. The order does not compel or deny anything; * * *"

In agreement are: *Skiven* v. *Mesta,* 141 F. 2d 668 (10th Cir. 1944); *Nolfi* v. *Chrysler Corp.,* 324 F. 2d 373 (3rd Cir. 1963); *United States* v. *Chelsea Towers, Inc.,* 404 F. 2d 329 (3rd Cir. 1968); *National Association for the Advancement of Colored People of Louisiana* v. *Michot,* 480 F. 2d 547 (3rd Cir. 1973); *Travelers Indemnity Co.* v. *Millers Manufacturing Co.,* 276 F. 2d 955 (6th Cir. 1960); *In re Master Key Antitrust Litigation,* 528 F. 2d 5 (2d Cir. 1975); *Levin* v. *American Export Industries, Inc.,* 473 F. 2d 1008 (2d Cir. 1973). Also see: 9 Moore's Federal Practice, par. 110.13(8), at p. 183 (1975) and 9 Wright and Miller, Federal Practice and Procedure, Section 2386 at p. 275 (1971).

The record refutes plaintiff's contention (petition p. 7) that the Court of Appeals decided questions other than that it lacked jurisdiction because there was no final and appealable order.

Respondent submits that the order of the Court of Appeals dismissing petitioner's appeal on the grounds that there is no final and appealable order correctly follows well established law as enumerated in prior federal court decisions. These cases consistently hold that an order of consolidation is not a final and appealable order. Petitioner has cited no contrary case. The Court of Appeals dismissal of petitioner's appeal is therefore not in conflict with the decision of any other Court of Appeals and raises no important issue of law.

The petitioner has also raised the issue of improper assessment of docketing fees by the deputy clerks of the District Court and Court of Appeals. This issue is not a case or controversy involving the respondent.

CONCLUSION.

For the foregoing reasons, the respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

MICHAEL J. MURRAY,
228 North LaSalle Street,
Chicago, Illinois 60601,
Attorney for Respondent.

THOMAS BROWN,
221 North LaSalle Street,
Chicago, Illinois 60601,
Attorney for Respondent.

WILLIAM J. QUINLAN,
MICHAEL COHEN,
THOMAS BROWN,
Of Counsel.